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TITLE 20 ENVIRONMENTAL PROTECTION CHAPTER 9 SOLID WASTE PART 2 RECYCLING AND ILLEGAL DUMPING

20.9.2.1 ISSUING AGENCY: New Mexico Environmental Improvement Board.

20.9.2.2 SCOPE: This part applies to the transporting, processing, storage, recycling, use, abatement, and generation of scrap tires. It establishes eligibility criteria for the Recycling and Illegal Dumping Fund. With the exception of Sections 20.9.2.302 NMAC, 20.9.2.407 NMAC, 20.9.2.500 NMAC, 20.9.2.700 NMAC, 20.9.2.1001 NMAC, and 20.9.2.1005 NMAC, this part does not apply to permitted or registered solid waste facilities, registered recycling facilities, composting facilities or collection centers. A registered recycling facility, composting facility or collection center that stores 10,000 or more PTEs or processes 200,000 or more PTEs per year shall also comply with the requirements of Sections 20.9.2.900 NMAC.

20.9.2.3 STATUTORY AUTHORITY: This part is adopted under the authority of the Recycling and Illegal Dumping Act, Sections 74-13-1 through 74-13-20 NMSA 1978 and the Solid Waste Act, Sections 74-9-1 through 74-9-43 NMSA 1978.

20.9.2.4 DURATION: Permanent.

20.9.2.5 EFFECTIVE DATE: Xxxx, 2006, unless a later date is cited at the end of a section.

20.9.2.6 OBJECTIVE: The objectives of the Recycling and Illegal Dumping Rules are to implement the provisions of the Act with the purposes stated in Section 74-13-2 NMSA 1978.

20.9.1.7 DEFINITIONS: As used in this part, the following definitions apply:

- A. "abatement" means to reduce in amount, degree or intensity or to eliminate;
- B. "Act" means the Recycling and Illegal Dumping Act, Sections 74-13-1 through 74-13-20 NMSA 1978;
- C. "agricultural use" means the beneficial use of scrap tires in conjunction with the operations of a farm or ranch that includes construction projects and aids in the storage of feed;
- D. "alliance" means the recycling and illegal dumping alliance;
- E. "board" means the environmental improvement board;
- F. "civil engineering application" means the use of scrap tires or other recycled material in conjunction with other aggregate materials in engineering applications;
- G. "composting" means the process by which biological decomposition of organic material is carried out under controlled conditions and the process stabilizes the organic fraction into a material that can be easily and safely stored, handled and used in an environmentally acceptable manner;
- H. "cooperative association" means a refuse disposal district created pursuant to the Refuse Disposal Act, Sections 4-52-1 through 4-52-15 NMSA 1978; a sanitation district created pursuant to the Water and Sanitation District Act, Sections 73-21-1 through 73-21-54 NMSA 1978; a special district created pursuant to the Special District Procedures Act, Sections 4-53-1 through 4-53-11 NMSA 1978; or other associations created pursuant to the Joint Powers Agreements Act, Sections 11-1-1 through 11-1-7 NMSA 1978; or the Solid Waste Authority Act, Sections 74-10-1 through 74-10-100 NMSA 1978;
- I. "department" means the department of environment;
- J. "dispose" means to deposit scrap tires or solid waste into or on any land or water;
- K. "hauler's temporary storage facility" means a facility where less than 100 scrap tires are stored for no more than 48 hours by a registered scrap tire hauler or registered commercial hauler for the purpose of separating scrap tires from tires that will be reused for their original purpose;
- L. "household" means any single and multiple residence, hotel or motel, bunkhouse, ranger station, crew quarters, campground, picnic ground or day-use recreation area;

M. "illegal dumping" means disposal of trash, scrap tires or any solid waste in a manner that violates the Solid Waste Act or the Recycling and Illegal Dumping Act;

N. "illegal dumpsite" means a place where illegal dumping has occurred;

O. "land reclamation" means the filling, rehabilitating, improving and restoring of excavated or deteriorated or disturbed land for the purpose of restoring the land to its approximate natural grade and to prepare or reclaim the land for re-use;

P. "land reclamation project" means a civil engineering application designed to fill, rehabilitate, improve and restore land which had been excavated, deteriorated or disturbed before the project and was not excavated for the burying of scrap tires;

Q. "market development" means activities to expand or create markets for recyclable and reusable materials;

S. "modify" means to change the terms or conditions of a permit or registration including:

- (1) any change in the fundamental method of processing of scrap tires;
- (2) any lateral or vertical expansion or alteration of the storage areas of the scrap tires, used tires, or tire derived products;
- (3) storage of scrap tires, used tires, or tire derived products beyond the permitted or registered boundaries;
- (4) "modify" does not include :
 - (a) routine maintenance, repair, or replacement;
 - (b) an increase in the process rate, if such increase does not exceed the design capacity of the tire recycling facility, civil engineering application or violate any condition of the permit;
 - (c) a change in the hours of operation, unless such hours are specified in a permit condition;
 - (d) a change in the operating plan that is not the subject of a permit condition; and
 - (e) temporary changes allowed by the secretary under Subsection E of 20.9.2.401 NMAC and Subsection D of 20.9.2.403 NMAC when there is an imminent danger to public health, welfare, or the environment;

T. "motor vehicle" means a vehicle or device that is propelled by an internal combustion engine or electric motor power that is used or may be used on the public highways for the purpose of transporting persons or property and includes any connected trailer or semi-trailer;

U. "operator" means the person(s) responsible for the overall operation or construction of all or any portion of a tire recycling facility, civil engineering application, or business that generates or hauls scrap tires;

V. "owner" means the person(s) who owns all or part of a tire recycling facility, civil engineering application, or business that generates or hauls scrap tires;

W. "passenger tire equivalent" or "PTE" means the total weight of scrap tires, in pounds, divided by 20 pounds. It is a standard for quantifying a mix of passenger and truck tires. PTEs may be estimated by the following conversion: A passenger/ light truck tire will equal one PTE (20 pounds) and a heavy truck tire will equal 5 PTEs (100 pounds);

X. "person" means any individual, partnership, company, corporation, firm, association, trust, estate, or legal entity, including government entities;

Y. "processing" means techniques to change physical, chemical or biological character or composition of solid waste but does not include composting, transformation or open burning;

Z. "public entity" means:

- (1) any state or local government;
- (2) any department, agency, special purpose district, or other instrumentality of federal, state or local government; or
- (3) any pueblo, tribe or Indian nation;

AA. "recycling" means any process by which recyclable materials are collected, separated or processed and reused or returned to use in the form of raw materials or products;

BB. "reusable tire" means a whole tire which has been used but is suitable for reuse for its originally intended purpose and has been specifically separated from scrap tires for reuse. A used tire which appears to be suitable for its originally intended purpose but which has not been separated from scrap tires shall be considered a scrap tire;

CC. "reuse" means the return of a commodity into the economic stream without a change to its original form;

DD. "scrap tire" means a tire, including a baled tire, that is no longer suitable for its originally intended purpose because of wear, damage, defect or obsolescence;

EE. "scrap tire baling" means the process by which scrap tires are mechanically compressed and bound into block form;

FF. "scrap tire generator" means a person who generates scrap tires, including retail tire dealers, retreaders, scrap tire processors, automobile dealers, automobile salvage yards, private company vehicle maintenance shops, garages, service stations and city, county and state government, but does not include persons who generate scrap tires in a household or in agricultural operations;

GG. "scrap tire hauler" means a person who transports scrap tires for hire for the purpose of recycling, disposal, transformation or use in a civil engineering application;

HH. "secretary" means the secretary of the New Mexico Environment Department or his or her designee; and

II. "tire" means a continuous solid or pneumatic rubber covering that encircles the wheel of a motor vehicle;

JJ. "tire-derived fuel" means whole or chipped tires that produce a low sulfur, high-heating-value fuel;

KK. "tire-derived product" means a usable product produced from the processing of a scrap tire but does not include baled tires;

LL. "tire recycling" means a process in which scrap tires are collected, stored, separated or reprocessed for reuse as a different product or shredded into a form suitable for use in rubberized asphalt or as raw material for the manufacture of other products; and

MM. "tire recycling facility" means a place operated or maintained for tire recycling but does not include:

(1) retail business premises where tires are sold, if no more than five hundred loose scrap tires or two thousand scrap tires, if left in a closed conveyance or enclosure, are kept on the premises at one time;

(2) the premises of a tire retreading business, if no more than three thousand scrap tires are kept on the premises at one time;

(3) premises where tires are removed from motor vehicles in the ordinary course of business, if no more than five hundred scrap tires are kept on the premises at one time;

(4) a solid waste facility having a valid permit or registration issued pursuant to the provisions of the Solid Waste Act or regulations adopted pursuant to that act or registration issued pursuant to the Environmental Improvement Act; or

(5) a site where tires are stored or used for agricultural uses; and

NN. "vector" means any agent capable of transmitting a disease from one individual or organism to another. Vectors include, but are not limited to, mosquitoes, flies and other insects, rodents, and vermin.

20.9.2.8 - 20.9.2.99 [RESERVED]

20.9.2.100 PROHIBITED ACTS:

A. A person shall not store or use in a civil engineering application, except for agricultural use, more than one hundred scrap tires anywhere in this state, unless the person has a valid permit or registration from the department.

B. A person shall not operate or maintain a tire recycling facility unless the facility has a valid permit issued pursuant to the provisions of the Recycling and Illegal Dumping Act or is a facility where tires are stored and used for agricultural uses and complies with rules enacted pursuant to the Recycling and Illegal Dumping Act.

C. A person shall not transport scrap tires for hire to a place other than a tire recycling facility unless the place is specifically excluded from the definition of a "tire recycling facility".

D. A person shall not transport scrap tires for hire either for disposal or recycling purposes without being registered as a scrap tire hauler by the department pursuant to rules adopted in accordance with the Recycling and Illegal Dumping Act.

E. A scrap tire generator shall not release scrap tires to a person other than a registered scrap tire hauler pursuant to the Recycling and Illegal Dumping Act or a registered commercial waste hauler pursuant to the Solid Waste Act.

F. A person shall not engage in the open burning of scrap tires.

G. A person shall not store or dispose of scrap tires or tire-derived products in a manner that creates a public nuisance, promotes the breeding or harboring of disease vectors or creates a potential for fire or other health or environmental hazards.

H. Except for agricultural uses, a person shall not store scrap tires or tire-derived products for a period exceeding twelve months unless specifically authorized by the secretary.

I. A scrap tire hauler shall not transport scrap tires without possessing a New Mexico scrap tire manifest approved by the department.

J. A person shall not engage in, maintain or allow illegal dumping.

20.9.2.101 TIRE RECYCLING FACILITIES; ENTRY BY DEPARTMENT; AVAILABILITY OF RECORDS TO DEPARTMENT: The secretary or any authorized representative, employee or agent of the department may enter, inspect, monitor, sample, or obtain records of a tire recycling facility, civil engineering application, scrap tire generator, or scrap tire hauler as provided in NMSA 1978 Section 74-13-5.

20.9.2.102- 20.9.2.199 [RESERVED]

20.9.2.200 SCRAP TIRE PERMITS AND REGISTRATIONS:

A. Any person seeking to construct, operate, or modify a tire recycling facility or civil engineering application that uses 100 tires or more shall first obtain a permit.

B. Any permit or registration for a civil engineering application granted prior to the effective date of these regulations shall remain in effect.

C. Permits are not required for temporary storage facilities that are used by registered scrap tire hauler or registered commercial hauler to separate scrap tires from reusable tires. Such facilities shall be included in the application for registration of the commercial hauler under Paragraph (10) of Subsection A of 20.9.1.224 or registration of the scrap tire hauler under Subsection L of 20.9.2.219.

D. A tire recycling facility or civil engineering application at a permitted or registered solid waste facility is not required to obtain a tire recycling or civil engineering application permit.

20.9.2.201 APPLICATION REQUIREMENTS FOR TIRE RECYCLING FACILITY PERMIT: Any person seeking a tire recycling facility permit to process or temporarily store scrap tires and tire derived products at any one time or do both at a fixed location shall file an application, which shall contain:

A. a site layout plan of the proposed facility drawn to scale that is in compliance with the requirements of 20.9.2.300 NMAC. The map shall include at least the following information:

- (1) site/facility name;
- (2) labels of all features;
- (3) north arrow;
- (4) map scale;
- (5) all structures and buildings that are or will be constructed at the facility including those used in collection, storage or processing operations;
- (6) location of equipment;
- (7) property boundaries;
- (8) water sources, arroyos, wetlands, ditches and other topographic features;
- (9) wells;
- (10) fences;
- (11) easements, and power lines;
- (12) all access routes and internal roads used for residential, commercial and emergency use;
- (13) loading and unloading areas;
- (14) the location of the areas used for collection of scrap tires, processing of scrap tires, used tires, tire derived products, and residuals from processing; and
- (15) the location and width of fire lanes.

B. the name, mailing address, telephone number and e-mail address, if available, of the proposed facility, applicant, facility owner and property owner;

C. the location of the proposed facility including the physical address, if available;

D. total acreage of the proposed facility site;

E. legal description of the site;

F. zoning of the site;

- G. the anticipated start up date of the facility and hours of operation;
- H. an emergency contingency plan that meets the requirements of 20.9.2.409 NMAC; and
- I. any other information deemed applicable and requested by the secretary.
- J. The following operational information:
 - (1) a list and description of the equipment to be used for handling, processing, recycling, or disposing of scrap tires;
 - (2) a detailed narrative of the method of processing;
 - (3) the maximum number of PTEs to be processed in one year;
 - (4) the maximum number of tires to be processed in one month;
 - (5) the maximum number of unprocessed PTEs that will be located at the site at any one time;
 - (6) the maximum number of processed PTEs that will be located at the site at any one time.
 - (7) the plans for the transportation of scrap or processed tires or both to and from the site;
 - (8) a description of the methods to be employed to prevent, control or contain a tire fire, including a description of the facility's water source and capacity;
 - (9) a description of the methods to be employed to control vectors for scrap and processed tires in temporary storage at the site;
 - (10) a description of the method to be used to remove residues from the site;
 - (11) any other information requested by the secretary.
- K. written verification from all local regulatory bodies having jurisdiction over the proposed facility, including planning, building, code enforcement and drainage departments that the proposed facility complies with applicable regulations;
- L. closure plans pursuant to 20.9.2.600 NMAC.

20.9.2.202 ADDITIONAL APPLICATION REQUIREMENTS FOR TIRE RECYCLING FACILITY THAT STORES 10,000 OR MORE PTEs AT ANY ONE TIME OR PROCESSES 200,000 PTEs OR MORE PER YEAR:

Any person seeking a permit for a tire recycling facility that stores 10,000 or more PTEs at any one time or processes 200,000 or more PTEs per year shall submit the following information in addition to all information required in Sections B through P of 20.9.2.201 NMAC:

- A. Site layout plan signed and sealed by a professional engineer registered in New Mexico that is in compliance with the requirements of 20.9.2.300 NMAC. The site layout plan shall include at least the following if applicable:
 - (1) location of temporary storage areas of scrap tires and tire derived products;
 - (2) location of fire lanes and fire control facilities;
 - (3) security fencing, gates and gatehouse, site entrance and access roads and fire lanes in accordance with 20.9.2.302 NMAC;
 - (4) locations of buildings;
 - (5) locations of processing equipment; and
 - (6) property boundary.
- B. an operation and maintenance manual that addresses all of the operating requirements;
- C. proposed financial assurance to meet the requirements of 20.9.2.900-999 NMAC;

20.9.2.203 APPLICATION REQUIREMENTS FOR CIVIL ENGINEERING APPLICATION

PERMITS: Any person seeking a permit for a civil engineering application that uses 100 to 999 scrap tires and is two (2) bales high or less shall:

- A. comply with the requirements of 20.9.2.300 NMAC and
- B. file an application, which shall include:
 - (1) the name, mailing address, telephone number, and e-mail address, if available, of the applicant, property owner, and builder of the civil engineering application;
 - (2) the location of the of the civil engineering application, including its physical address if available;
 - (3) the legal description of the property on which the proposed civil engineering application will be constructed including at least the acreage, section, township, range and county;
 - (4) if different from the civil engineering application site, the location, including the physical address, if available, and the name, mailing address, telephone number, and the e-mail address, if available, of the property owner of the temporary storage site where scrap tires will be stored temporarily before and during construction;
 - (5) a detailed narrative of the proposed civil engineering application;

- (6) if the civil engineering application is to be in a floodplain, a waterway, or a wetland, written authorization of the project by the U.S. Army Corps of Engineers or other appropriate authorities;
- (7) the anticipated date when tires will be brought to the civil engineering application site or temporary storage site;
- (8) the origins, if known, of the scrap tires to be used for the civil engineering application;
- (9) the proposed dates of completion of the civil engineering application and removal of scrap tires kept in temporary storage;
- (10) method to be used to anchor scrap tires, if applicable;
- (11) method to be used to cover scrap tires, if applicable;
- (12) the method to be used to fill scrap tires; if applicable; and
- (13) any other information deemed applicable and requested by the department.

20.9.2.204 ADDITIONAL APPLICATION REQUIREMENTS FOR CIVIL ENGINEERING APPLICATION THAT USES 1000 TO 99,999 SCRAP TIRES AND IS NO MORE THAN TWO BALES

HIGH: Any person seeking a permit for a civil engineering application that uses 1000 to 99,999 scrap tires and is no more than 2 bales high shall submit an application which includes the following information in addition to that required under 20.9.2.203 NMAC,:

- A.** a site layout plan of the proposed civil engineering application that is in compliance with the requirements of 20.9.2.302 NMAC, drawn to scale. The plan shall include at least the following information:
 - (1) labels of all features;
 - (2) map scale;
 - (3) north arrow;
 - (4) the proposed civil engineering application;
 - (5) all structures and buildings at the civil engineering application site if within 100 feet of the civil engineering application;
 - (6) temporary storage areas for other material, equipment , and residuals from processing;
 - (7) loading and unloading areas for scap tires, and other material to be used for the civil engineering project;
 - (8) location of all storage areas for scrap tire, tire derived products, used tires and fire lanes;
 - (9) property boundaries;
 - (10) water sources, arroyos, wetlands, ditches and other topographic features;
 - (11) wells;
 - (12) fences;
 - (13) easements, and power lines; and
 - (14) all access routes and internal roads used for residential, commercial and emergency use.
- B.** If the scrap tires to be used for the proposed civil engineering application will be kept in temporary storage before and during construction on property that is different from the one described in Subsection A of 20.9.2.204 NMAC, provide a plat map of the temporary storage facility that includes all items required in Subsection A of 20.9.2.204 NMAC for the civil engineering application;
- C.** an emergency contingency plan that meets the requirements of 20.9.2.409 NMAC;
- D.** cross sections of the proposed civil engineering application and the temporary storage site showing a surface profile of the project vertically and laterally; and
- E.** written verification from all local regulatory bodies having jurisdiction over the proposed facility, including planning, building, code enforcement and drainage departments, that the proposed facility complies with applicable regulations.

20.9.2.205 APPLICATION PERMIT REQUIREMENTS FOR CIVIL ENGINEERING APPLICATION THAT USES 100,000 PTEs OR MORE OR IS MORE THAN TWO SCRAP TIRE BALES

HIGH: Any person seeking a permit for a civil engineering application that uses 100,000 PTEs or more or is more than two scrap tire bales high shall submit the following information in addition to that required under 20.9.2.204 NMAC:

- A.** facility plans, elevations, drawings and cross sections of the proposed civil engineering application signed and sealed by a professional engineer registered in New Mexico; and
- B.** if the scrap tires to be used for the proposed civil engineering application will be kept in temporary storage before and during construction on property that is different from the proposed civil engineering application,

facility plans, elevations, drawings and cross sections of that storage area signed and sealed by a professional engineer registered in New Mexico shall be submitted.

20.9.2.206 APPLICATION REQUIREMENTS FOR CIVIL ENGINEERING APPLICATIONS USING SCRAP TIRES FOR LAND RECLAMATION: Any person seeking a permit for a civil engineering application using scrap tires for land reclamation shall file an application which shall include:

- A. the name, mailing address, telephone number and e-mail address, if available, of the proposed land reclamation site, the applicant, and the land reclamation site's property owner;
- B. the physical address of the proposed land reclamation site, if available;
- C. the legal description of the property on which the proposed land reclamation site will be constructed which shall include the following information: acreage, section, township, range; county, quarter section 1, quarter section 2, quarter section 3;
- D. the anticipated start up date when tires will be brought to the site;
- E. the anticipated completion date;
- F. the origins, if known, of the scrap tires to be used for land reclamation;
- G. a description of other fill materials and their application;
- H. a description of compaction methods;
- I. the method of placement and commingling of scrap tires to achieve a mix of tire pieces with the inert fill material in a proportion no greater than 33% of tire material by volume;
- J. the approximate volume, dimensions and depth of the depression to be filled;
- K. the approximate number of PTEs proposed to be placed in the site;
- L. ground storage area that is in compliance with the requirements of 20.9.2.302 NMAC;
- M. a description of the final cover;
- N. an emergency contingency plan that meets the requirements of 20.9.2.409 NMAC;
- O. a letter from the local county official or municipal authority in which the site is or will be located that the applicant has provided notice of the application of the filing to the county or municipality;
- P. a sworn notarized affidavit signed by the property owner certifying that the excavated area, hole or disturbed land area existed before the project and was not excavated for the burying of scrap tires; and
- Q. a demonstration that run-off from the land reclamation site will not discharge contaminants in violation of the New Mexico Water Quality Act, commission regulations or standards, or the Federal Clean Water Act, including an analysis of proposed run-on and run-off flow and control systems.

20.9.2.207 ADDITIONAL APPLICATION REQUIREMENTS FOR CIVIL ENGINEERING APPLICATIONS THAT PLAN TO USE 100,000 OR MORE SCRAP TIRES PER YEAR FOR LAND RECLAMATION: Any person seeking a permit for a civil engineering application that plan to use more than 100,000 scrap tires per year for land reclamation shall submit the following information in addition to that required under 20.9.2.206 NMAC:

- A. site layout plan of the land reclamation site and any above ground storage areas signed and sealed by a professional engineer registered in New Mexico. The site layout plan shall include at least the following if applicable:
 - (1) location of temporary storage areas of scrap tires and tire derived products;
 - (2) location of fire lanes and fire control facilities;
 - (3) security fencing, gates and gatehouse, site entrance and access roads and fire lanes in accordance with 20.9.2.302 NMAC;
 - (4) locations of buildings; and
 - (5) locations and descriptions of processing equipment.
- B. an operation and maintenance manual that shall address all of the operating requirements;
- C. proposed financial assurance to meet the requirements of 20.9.2.900-999 NMAC;

20.9.2.208 PERMIT APPLICATION REVIEW:

- A. Upon receipt of an application for a permit, the department shall review the application to determine if additional information is necessary or shall determine the application complete. If the department determines that additional information is necessary, it shall notify the applicant in writing.
- B. The applicant shall submit any information requested within 60 days of receipt of a request for additional information, or the application shall be denied without prejudice. The department may extend the response time for good cause. When submitting the information, the applicant shall submit three copies. If the

permit application is not complete after two requests for additional information, the secretary may deny the permit application without prejudice.

20.9.1.209 PUBLIC NOTICES, HEARINGS AND MEETINGS:

A. Within thirty (30) days after an application for a tire recycling facility that proposes to store 10,000 or more PTEs at any one time or process 200,000 or more PTEs per year or a land reclamation project that proposes to use 100,000 or more PTEs per year is deemed complete, the applicant shall provide public notice. The notice shall be published once in a newspaper of general circulation in the county where the facility is proposed to be constructed, operated or closed. This notice shall appear in either the classified or legal advertisements section of the newspaper and at one other place in the newspaper calculated to give the general public the most effective notice. Where appropriate, the notice shall be printed in both English and Spanish or other predominant language of the area. The notice shall include the following:

- (1) name, address, and telephone number of the applicant and contact person;
- (2) the anticipated start-up date of the facility or modification, and planned hours of operation;
- (3) a description of the facility, including the general process, location, size, quantity, rate, and type of tires to be handled and a description of any proposed modification;
- (4) the anticipated start up date of the facility; and
- (5) a statement that written comments regarding the application should be provided to the department.

B. Thirty (30) days shall be allowed for the public to submit written comments to the department. Should the secretary determine that there is significant public interest, a public hearing shall be held in the geographic area likely to be impacted by the tire facility. The secretary shall issue a permit, issue a permit with terms and conditions, or deny the permit within 120 days following the public hearing. If no public meeting or public hearing is warranted, the secretary shall issue a permit, issue a permit with terms and conditions, or deny the permit within sixty (60) days after the date the application is deemed complete.

20.9.1.210 PERMIT ISSUANCE:

A. The secretary shall issue the permit, issue the permit with terms and conditions, or deny the permit within 60 days after the application is deemed complete or if a public hearing is held, within 120 days following the public hearing.

B. The secretary shall issue a permit if the applicant demonstrates that the requirements of this part and the Act are met and that neither a hazard to public health, welfare or the environment nor undue risk to property will result.

C. The terms and conditions of the permit or permit modification shall be specifically identified by the secretary and conveyed to the applicant. Upon written agreement by the applicant to those terms and conditions, the permit shall be issued.

D. At the time of permit issuance, the tire recycling facility or civil engineering application will be assigned a permit number.

D. A permit issued for a new or existing tire recycling facility shall be for the active life of the facility as described in the approved permit, or for twenty years, whichever is less.

E. A permit issued for a civil engineering application shall terminate upon completion of the civil engineering application or within five years of issuance of the permit, whichever is less.

20.9.2.211 PERMIT DENIAL, SUSPENSION OR REVOCATION:

A. In addition to the causes for suspension or revocation listed in Subsection B of 74-13-13 NMSA 1978, the secretary may deny, suspend or revoke a permit during its term for:

- (1) violation by the owner or operator of any term or condition of the permit, any requirement of the Act, these rules or any subsequent rule adopted by the department;
- (2) failure of the applicant in the application or during the permit issuance process to disclose fully all relevant facts;
- (3) misrepresentation by the owner or operator of any relevant facts at any time;
- (4) a determination that the permitted activity endangers public health, welfare or the environment;
- (5) failure of the owner or operator to demonstrate the knowledge and ability to operate a facility in accordance with this part;
- (6) a history of non-compliance by the owner or operator with environmental regulations, rules or statutes at another facility of any state or the United States;

(7) having any permit revoked or permanently suspended for cause under the environmental laws of any state or the United States;

(8) modifying a facility without the approval of the secretary; or

(9) failure to respond to a request for additional information within sixty (60) days of notification.

B. A permit may be revoked in accordance with the procedures set forth in Adjudicatory Procedures – Environment Department, 20.1.5 NMAC. Construction, modification and interim operation, if any, shall cease upon the effective date of the revocation.

C. Once a permit or permit modification is issued and all appeals are final, operations or construction shall begin within one year. If operation or construction does not begin within one year, the secretary may revoke the permit, but in no event shall it be revoked pursuant to this subsection sooner than one year after the effective date of these regulations.

20.9.2.212 EFFECT OF PERMIT OR REGISTRATION:

A. Any terms or conditions of the permit or registration shall be enforceable to the same extent as a regulation of the board.

B. The existence of a permit or registration issued under this part shall not constitute a defense to a violation of this part or the Act.

20.9.2.213 PERMIT MODIFICATION:

A. Any owner or operator of a tire recycling facility or civil engineering application who seeks to modify such facility or permit conditions shall obtain a permit modification prior to making any modifications. A permit modification shall not extend the initial term of any permit.

B. An application for a modification shall demonstrate compliance with the portions of this part that pertain to such a modification.

C. The secretary may initiate the modification of permit conditions or require modification of the facility if:

(1) changes occur after permit issuance, which justify permit conditions that are different from or are not included in the existing permit;

(2) the secretary has received information that was not in the record at the time of permit issuance and would have justified the application of different permit conditions at the time of issuance;

(3) the standards or regulations on which the permit was based have changed by statute, through promulgation of new or amended standards or regulations, or by judicial decision after the permit was issued;

(4) the secretary determines good cause exists for modification, such as an act of God, strike, flood, or materials shortage, or other events over which the permittee has little or no control and for which there is no reasonable remedy.

20.9.2.214 TRANSFER OF PERMITS AND CHANGE IN PERMIT APPLICANT:

A. A change in ownership of a permittee requires a permit transfer and shall be allowed according to the following procedure.

(1) Where the entity owning the permit undergoes an ownership change, but the permitted entity remains the same, the new owner shall, within thirty days of the change, submit the following:

(a) a description of the change in ownership;

(b) the date of the change in ownership;

(c) if the change in ownership is for a tire recycling facility that stores 10,000 or more PTEs at any one time or processes 200,000 or more PTEs per year or a land reclamation project that uses 100,000 or more PTEs per year, a statement that the current financial assurance will remain in effect, or a new proposed financial assurance to meet the requirements of 20.9.2.900-999 NMAC has been obtained;

(d) a statement whether the new owner has been convicted of a felony or other crime within ten years immediately preceding the date of the transfer, and if so details of the crime and conviction;

(e) a statement whether the new owner has been fined for alleged violations of any environmental laws of this state, any other state or the United States, and if so, details of any allegations, settlements or compliance orders;

(f) any other information required by the department.

(2) If the change in ownership is for a tire recycling facility that stores 10,000 or more PTEs at any one time or processes 200,000 or more PTEs per year or a land reclamation project that uses 100,000 or more PTEs per year, the permittee shall provide proof of public notice of the ownership change using the procedures applicable

to permit applications in Subsection A of 20.9.2.209 NMAC, and shall indicate in the public notice that the department will accept public comment on the ownership change for a period of 30 days after the date of publication.

(3) The existing financial assurance required by 20.9.2.900-999 NMAC shall remain in effect until the secretary has approved any new proposed financial assurance submitted by the new owner.

(4) The secretary shall, within 90 days after the submission of all required information, but not before the close of the public comment period, issue an order approving, approving with terms or conditions, or denying the application for permit transfer and revoking the permit. The secretary may condition the approval or deny the application and revoke the permit based on evidence in the administrative record. The secretary may deny the application for any reason set forth in Subsection C of 20.9.2.211 NMAC.

B. A change in the named permittee requires a permit transfer and shall be allowed according to the following procedure.

(1) Where the person owning the permit seeks to transfer the permit to a new person to be named as permittee, the existing owner and the proposed new owner shall file an application with the department requesting transfer of the permit. The application shall contain the following information:

(a) a description of the proposed change of permittee;

(b) an explanation of whether the change in permittee will have any effect on the operations;

(c) If the change in permittee is for a tire recycling facility that stores 10,000 or more PTEs at any one time or processes 200,000 or more PTEs per year or a land reclamation project that uses 100,000 or more PTEs, a new proposed financial assurance to meet the requirements of 20.9.2.900-999 NMAC;

(d) a statement whether the new owner has been convicted of a felony or other crime within ten years immediately preceding the date of the transfer, and if so, details of the crime and conviction;

(e) a statement whether the new owner has been fined for alleged violations of any environmental laws of this state, any other state or the united states, and if so, details of any allegations, settlements or compliance orders, and

(f) If the change in permittee is for a tire recycling facility that stores 10,000 or more PTEs at any one time or processes 200,000 or more PTEs per year or a land reclamation project that uses 100,000 or more PTEs;

(g) any other information required by the secretary;

(2) The permittee shall provide public notice of a proposed permit transfer using the procedures applicable to permit applications in Subsection A of 20.9.2.209 NMAC, and shall indicate in the public notice that the department will accept public comment on the permit transfer for a period of 30 days after the date of publication.

(3) If applicable, the existing financial assurance required by 20.9.2.900-999 NMAC shall remain in effect until the secretary has approved any new proposed financial assurance submitted by the proposed new permittee;

(4) The secretary shall, within 90 days after the submission of all required information, but not before the close of the public comment period, issue an order approving, approving with terms or conditions, or denying the application for permit transfer, and if necessary, revoking the permit. The secretary may condition the approval or deny the application and if necessary revoke the permit based on evidence in the administrative record. The secretary may deny the application or if necessary revoke the permit for any reason set forth in Subsection C of 20.9.2.211 NMAC.

C. If a permit applicant changes ownership or seeks to transfer the application to a new proposed permittee, the applicant and transferee shall follow the procedures in this section. If the application has already been deemed complete, the application shall be re-noticed and re-submitted.

20.9.2.215 PERMIT EXPIRATION:

A. A permit issued for a new or existing tire recycling facility shall expire twenty years after issuance.

B. A permit issued for a civil engineering applications shall expire when the project has been completed and the final report in compliance with 20.9.602 NMAC has been submitted and approved in writing.

C. A permit shall automatically expire when the department verifies that the closure and any post-closure care plan, including corrective action, have been completed.

D. If a permitted facility begins operation, and thereafter does not operate for at least one year, authorization to accept scrap tires is suspended and closure activities shall begin immediately.

20.9.2.216 APPLICATION REQUIREMENTS FOR SCRAP TIRE HAULER REGISTRATION:

Haulers of scrap tires shall register with the department 30 days prior to beginning operations. Registrations are not transferable. Applications for scrap tire hauler registration requirements shall include the following:

- A. the name, address, telephone number, and e-mail address of the person for which registration is sought,
- B. the names, addresses, telephone numbers, dates of birth, and driver's license numbers of the owner and operator;
- C. the anticipated start up date, hours of operation, and days of collection;
- D. location and zoning of vehicle maintenance and storage yard and a demonstration that the use meets all zoning and land use regulations and restrictive covenants;
- E. certification that drivers and vehicles are, and will continue to be, properly licensed;
- F. a statement whether any of the owners or operators have been fined for violation of any environmental laws of any state or the United States;
- G. a statement of whether any of the owners or operators have had any permit or registration revoked or permanently suspended for cause under the environmental laws of any state or the United States;
- I. a copy of a current warrant issued by the New Mexico Public Regulations Commission, Transportation Division pursuant to 18.3.2.8A.(5) NMSA;
- J. list all registered or permitted tire recycling facilities, agricultural sites or solid waste facilities where scrap tires will be transported;
- L. If the hauler's temporary storage facility is to be used to separate from tires that could be beneficially reused, the following information is required:
 - (1) the name and site address of facility; and
 - (2) the maximum number of scrap tires to be stored at any one time, which shall not exceed 99 scrap tires, and
- K. any additional information required by the department.

20.9.2.217 SCRAP TIRE HAULER REGISTRATION PROCEDURES:

- A. The registration procedures in 20.9.2.220-226 NMAC apply to scrap tire haulers.
- B. Upon receipt of an application for registration, the department shall review the application to determine if additional information is necessary or shall deem the application complete. If the department determines that additional information is necessary, it shall notify the applicant in writing.
- C. Within 60 days of receipt of a request for additional information regarding any scrap tire hauler registration application, the owner or operator shall submit the information requested by the department, or the secretary may deny the registration application without prejudice.

20.9.2.218 SCRAP TIRE HAULER REGISTRATION DENIAL, REVOCATION, OR SUSPENSION:

- A. The secretary may deny, revoke, or suspend a scrap tire hauler registration on the basis of information in the application or evidence in the administrative record, or other information that comes to the secretary's attention at any time.
- B. Causes for denying, revoking, or suspending a registration include a finding that the applicant or owner or operator has:
 - (1) knowingly misrepresented a material fact in the application;
 - (2) refused to disclose or failed to disclose the information required under the provisions of this part or the Act;
 - (3) exhibited a history of willful disregard for the environmental laws of any state or the United States;
 - (4) had any permit revoked or permanently suspended for cause under the environmental laws of any state or the United States; or
 - (5) violated a term or condition of the registration, any requirement of this part, or any requirement of the Act or otherwise endangered public health or welfare.
 - (6) knowingly misrepresented a material fact at any time after issuance of the registration
 - (7) failure to comply with the Parental Responsibility Act, NMSA 1978, Sections 40-5A-1 to 40-5A-13 (1998 Cum. Supp.).
- C. If the department recommends denial of a scrap tire hauler registration, notice shall be provided to the applicant by registered mail. The applicant may request a hearing on the registration denial by filing a written request for hearing with the hearing clerk within 30 days of receipt of the notice. A request for hearing shall be

treated as a hearing determination and the hearing conducted pursuant to 20.1.4 NMAC. If no request for hearing is filed within 30 days of receipt of the notice, the recommended denial shall become a final action of the secretary.

D. A scrap tire hauler registration may be revoked or suspended in accordance with the procedures set forth in 20.1.5 NMAC, Adjudicatory Procedures - Environment Department. Construction, modification and interim operation, if any, shall cease upon the effective date of the revocation or suspension.

20.9.2.219 REGISTRATION ISSUANCE:

A. Within 30 days after an application for a scrap tire hauler registration is deemed complete, the secretary shall issue the registration, issue the registration with terms and conditions, or deny the registration.

B. The secretary shall issue a registration if the owner or operator demonstrates that the requirements of this part and the Act are met and that neither a hazard to public health, welfare or the environment nor undue risk to property will result.

C. If appropriate, terms and conditions of a registration shall be specifically identified by the secretary.

D. At the time of registration issuance, the scrap tire hauler will be assigned a registration number.

20.9.2.220 SCRAP TIRE HAULER REGISTRATION RENEWAL:

A. A scrap tire hauler shall renew its registration every five years. To renew a registration, the scrap tire hauler shall file a complete renewal application no later than 30 days prior to the expiration date of the registration. A registration renewal application shall include the same information required in 20.9.2.222 NMAC, and in addition provide a complete description of its compliance history and any other information requested by the secretary. The existing registration shall remain in affect until the registration is granted, granted with conditions or denied.

B. A registered scrap tire hauler may continue to operate under the terms and conditions of the existing registration for a period not to exceed two years after the effective date of these rules or until the registration is renewed whichever is first provided that:

(1) the owner and operator are in compliance with the existing registration, this part, and any applicable federal regulations;

(2) a complete renewal application is submitted in a timely fashion in accordance with this section;

(3) the owner or operator adequately submits any requested additional information by the deadline specified by the secretary.

20.9.2.221 SCRAP TIRE HAULER REGISTRATION EXPIRATION:

A. A scrap tire hauler registration shall expire five (5) years from the date of issuance of the registration.

B. A scrap tire hauler registration shall terminate upon any change of owners or operators of the registered scrap tire hauler, and the new owner or operator shall obtain a new registration prior to operation.

20.9.2.222 CURRENT HOLDERS OF TIRE RECYCLING FACILITY REGISTRATIONS, SPECIFIC TIRE RECYCLING FACILITY PERMITS AND LAND RECLAMATION SITES: Registered tire recycling facilities, land reclamation sites, and holders of specific permits for tire recycling facilities shall demonstrate compliance with the provisions of this rule within xxx days of its adoption.

20.9.2.223 CONFIDENTIALITY OF INFORMATION:

A. Permit applicants, owners or operators of tire recycling facilities or civil engineering applications, or scrap tire haulers who submit information to the department may claim such information as confidential. Any claim of confidentiality must be asserted at the time of submittal.

B. To claim confidentiality of information in a submittal, the submitter must clearly mark each page in the document on which the submitter claims there is confidential information, and submit to the department a written description of the basis for the claim of confidentiality at the time of submission. The department shall review the claim of confidentiality based on the written submittal and determine whether the information may be maintained as confidential pursuant to the Inspection of Public Records Act, Section 14-2-1 et seq. NMSA 1978. If the department determines that information in a submittal is confidential, the department may require submission of redacted copies of the submittal for the public record.

C. If no claim of confidentiality is made at the time of submission, any such claims are deemed waived and the department may make the information available to the public without further notice.

D. Information that is determined by the department to be confidential may be disclosed to officers, employees, or authorized representatives of the United States concerned with implementing RCRA, or when relevant in any proceedings under the Act or this part.

20.9.2.224 FEE SCHEDULE: There are no fees for tire recycling facility permits, civil engineering application permits, scrap tire haulers registrations.

20.9.2.300 SITING AND DESIGN REQUIREMENTS

20.9.2.301 SITING CRITERIA FOR TIRE RECYCLING FACILITIES AND CIVIL ENGINEERING APPLICATIONS:

A. No tire recycling facility shall be located within 25 feet of a floodplain, a watercourse, or a wetland unless the floodplain, watercourse, or a wetland has been altered pursuant to an approval from the Army Corps of Engineers or other appropriate authority;

B. No civil engineering application shall be constructed in a floodplain, a waterway, or a wetland without authorization by the U.S. Army Corps of Engineers or other appropriate authority;

C. No tire recycling facility or civil engineering application shall be located in an unstable area, except where the owner or operator demonstrates that engineering measures have been incorporated into the design to ensure that the integrity of the structural components of the tire recycling facility or civil engineering application will not be disrupted or unless otherwise approved by the secretary.

D. No tire recycling facility or civil engineering application shall be located within historically or archaeologically significant sites, unless in compliance with the Cultural Properties Act, Sections 18-6-1 to 18-6-23 NMSA 1978 and the Prehistoric and Historic Sites Preservation Act, Sections 18-8-1 to 18-8-8 NMSA 1978.

20.9.2.302 OPERATIONAL REQUIREMENTS FOR STORAGE OF SCRAP TIRE AND TIRE DERIVED PRODUCT:

A. A temporary scrap tire or tire derived product storage site shall be designed, constructed, and operated so that the health, welfare and safety of operators, haulers, and others who may utilize the site are maintained.

B. Outdoor storage of scrap tires and tire derived products shall not be located within the right of way of any electric power lines and in no event within 20 feet on either side of an electric power line.

C. Open burning is prohibited at all tire storage sites. Smoking shall be allowed only in designated areas.

D. Scrap tire piles, stacks of tire bales or tire-derived products shall be no greater than 10 feet in height, nor shall the pile or stack be more than 50 feet wide by 100 feet long.

E. There shall be a minimum separation of 40 feet between outdoor tire piles, bale stack, tire derived products, or other stored materials. This 40-foot space shall be designated as a fire lane that totally encircles the tire piles and shall be maintained as an all-weather road.

F. Outdoor storage piles of scrap tires, bale stacks or tire derived products must be separated from property boundaries and buildings by a minimum of 50 feet.

G. Outdoor storage piles, bale stacks or tire derived products must be separated from grass and weeds by a minimum of 40 feet and from brush and forested areas by a minimum of 100 feet.

H. When there are more than three (3) outdoor storage piles of scrap tires or tire derived products that are 10 feet high by 50 feet wide by 100 feet long, the separation between the groups shall be at least 75 feet wide.

I. Tires shall not be stored under bridges, elevated trestles, elevated roadways, or elevated railroads.

J. When the bulk volume of scrap tires or tire derived products will be more than 20,000 cubic feet, a firmly anchored fence that is at least six feet high or other method of security that has been approved by the local fire authority is required.

K. All gates to the outdoor storage piles of scrap tires or tire derived products shall be locked when the facility is not staffed.

L. All gateways, fire breaks and separation lanes shall be free of obstructions at all times.

M. The scrap tire storage site shall have fire extinguishers that are in compliance with the local fire code.

N. Each site permitted as a tire recycling facility shall conspicuously display at each entrance a sign at least 1 1/2 feet by 2 1/2 feet in size with clear, legible letters stating the name of the scrap tire storage site using

the, name and location of the site, the tire recycling facility permit number, the hours of operation and emergency telephone numbers.

O. The facility must have suitable structures or features to prevent surface water run-on from surrounding areas as well as preventing surface runoff from leaving the facility.

P. The scrap tire storage site shall be designed, constructed and maintained in accordance with all local building codes, fire codes, and other applicable local codes and regulations including litter and nuisance codes.

Q. An adequate means of suppression or extinguishing fires shall be provided.

20.9.2.400 GENERAL OPERATING AND CONSTRUCTION REQUIREMENTS: Owners and operators of all tire recycling facilities and civil engineering application sites shall operate and construct the tire recycling facility or civil engineering application in a manner that:

A. does not cause a public nuisance or create a potential hazard to public health, welfare or the environment;

B. is in compliance with rules adopted by state and local fire authorities; and

C. operates and maintains the facility in accordance with 20.9.2.302 NMAC.

20.9.2.401 ADDITIONAL OPERATING REQUIREMENTS FOR ALL PERMITTED TIRE RECYCLING FACILITIES:

A. Owners and operators of all tire recycling facilities shall:

(1) ensure that copies of the emergency contingency plan that meets the requirements of 20.9.2.409 NMAC; are readily accessible to employees on duty; and

(2) train employees when hired and at least annually thereafter on when and how to implement the emergency contingency plan that meets the requirements of 20.9.2.409 NMAC and document in the operating record that such training has been conducted.

(3) maintain a written operating record and manifests in compliance with 20.9.2.411 NMAC and 20.9.2.500 NMAC; and

(4) notify the department both orally and in writing within 24 hours of an incident that negatively impacts the environment or human health or requires implementation of the facility's emergency contingency plan.

B. The secretary may order temporary changes in operation or facility design in emergency situations when the secretary determines there is an imminent danger to public health, welfare or the environment.

20.9.2.402 ADDITIONAL OPERATING REQUIREMENTS FOR PERMITTED TIRE RECYCLING FACILITIES THAT STORES MORE THAN 10,000 PTEs AT ANY ONE TIME OR PROCESSES MORE THAN 200,000 PTEs PER YEAR: Owners and operators of tire recycling facilities that stores 10,000 or more PTEs at any one time or processes 200,000 or more than PTEs per year shall:

A. post signs at the facility to indicate the name and address of the site, the hours of operation, the tire recycling facility permit number and emergency telephone numbers; and

B. prominently post key operational procedures.

20.9.2.403 CIVIL ENGINEERING APPLICATION CONSTRUCTION AND MAINTENANCE REQUIREMENTS:

A. Scrap tires kept in temporary storage before and during construction of a civil engineering application will be stored in compliance with 20.9.2.302 NMAC.

B. Copies of the emergency contingency plan that meets the requirements of 20.9.2.409 NMAC shall be readily accessible to employees on duty.

C. All civil engineering applications shall be constructed in a stable manner.

D. The secretary may order temporary changes in storage, construction or design in emergency situations when the secretary determines there is an imminent danger to public health, welfare or the environment.

E. After completion, all civil engineering applications should be inspected on a regular basis by the site owner or operator to observe any weakness or failure of the structure.

F. In the event of a crack, break or collapse of the civil engineering application, the failure will be repaired in a timely manner so that scrap tires do not enter contiguously owned property or become a health hazard.

G. Loose tires used for civil engineering applications shall be filled with soil or other fill material to prevent the tires from becoming harborage for vectors.

H. The owner or operator of a civil engineering application shall maintain a written operating record and retain manifests in compliance with 20.9.2.411 NMAC and 20.9.2.500 NMAC; and

I. Upon completion of the civil engineering application, all excess scrap tires held in temporary storage and equipment used for construction shall be removed, and final report shall be submitted to the department pursuant to 20.9.2.408 NMAC.

20.9.2.404 ADDITIONAL CONSTRUCTION AND MAINTENANCE REQUIREMENTS FOR A CIVIL ENGINEERING APPLICATION THAT USES 100,000 OR MORE PTEs OR IS MORE THAN TWO BALES HIGH: If the civil engineering application constructed is different from the plans submitted in the application, a professional engineer registered in New Mexico shall provide stamped and sealed as-built certification of the civil engineering application actually constructed.

20.9.2.405 OPERATING REQUIREMENTS FOR CIVIL ENGINEERING APPLICATIONS USING SCRAP TIRES FOR LAND RECLAMATION:

A. Undisturbed land shall not be excavated for the purpose of filling the same land with a mixture of scrap tires and debris or soil. Any borrow area, hole or other disturbed land area to be used for a land reclamation project must have existed before the project, and it must have been excavated or soil removed for a purpose other than for the burial of tires or tire pieces.

B. Any person holding a permit for a civil engineering application using scrap tires for land reclamation shall:

- (1) not adversely affect human health, public safety or the environment, either during fill operations or after the reclamation project is completed;
- (2) not create a public nuisance;
- (3) place scrap tires below ground mixed in a proportion no greater than 33% scrap tires by volume with soil suitable as fill material and compact and grade the structure in a manner that will prevent erosion;
- (4) maintain a written operating record and retain manifests in compliance with 20.9.2.411 NMAC and 20.9.2.500 NMAC during the filling process; and
- (5) not retain scrap tires on the ground surface without burial and mixing with inert material for a period longer than one week.

20.9.2.406 ADDITIONAL OPERATING REQUIREMENTS FOR CIVIL ENGINEERING APPLICATIONS THAT USE 10,000 OR MORE SCRAP TIRES PER YEAR FOR LAND RECLAMATION: No more than 10 acres of land shall be reclaimed using scrap tires at any one location.

20.9.2.407 OPERATING REQUIREMENTS FOR SCRAP TIRE HAULER:

A. Any person who hauls scrap tires, whether or not for hire, shall:

- (1) collect and transport tires so as to prevent environmental, safety, and public health or welfare hazards and nuisances;

- (2) securely tie, strap or use a fully enclosed container to transport scrap tires to prevent loss of contents during transportation;

B. Additional operating requirements for persons that haul scrap tires for hire:

- (1) All registered scrap tire haulers shall conspicuously label all vehicles on both side doors with the company's name, telephone number, and registration number.

- (2) Pursuant to 20.9.2.500 NMAC, registered scrap tire haulers shall provide a scrap tire manifest to the scrap tire generator for each load of scrap tires hauled.

- (3) Registered scrap tire haulers shall comply with all manifesting requirements in 20.9.500 NMAC and record keeping requirements in 20.9.2.411 NMAC.

- (4) Each registered scrap tire hauler shall notify the scrap tire generator of any changes to the manifest. A written notification must be received by the generator within two weeks of any changes.

- (5) Scrap tire haulers shall provide prior notification to the department in writing of any major changes in operation. A major change includes a change in ownership, a change in location of vehicle maintenance and storage yard and a change in the disposal facility being used. In the case of emergency, where prior notice cannot be given, written notice shall be given within 48 hours after the change.

- (6) A scrap tire hauler is responsible for assuring that scrap tires are transported to a permitted or registered facility or agricultural operation.

20.9.2.408 SCRAP TIRE GENERATOR OPERATING REQUIREMENTS:

- A. Each scrap tire generator is responsible for assuring that scrap tires are transported to a permitted or registered facility or agricultural operation.
- B. Each scrap tire generator shall use manifests, work orders, invoices or other records to document the removal and management of all scrap tires generated on-site.
- C. Tires stored outside shall be monitored for vectors.
- D. Each scrap tire generator may transport its scrap tires between its own business locations or to a permitted or registered facility or agricultural operation without a scrap tire hauler registration.
- E. Each scrap tire generator shall comply with all manifesting requirements in 20.9.500 NMAC.

20.9.2.409 CONTINGENCY PLAN FOR EMERGENCIES: Holders of tire recycling facility permits and civil engineering application permits, shall:

- A. maintain a current emergency contingency plan designed to minimize hazards to public health, welfare or the environment.
- B. A copy of the emergency contingency plan shall be kept at the permitted facility and copies shall be provided to the appropriate emergency response authorities of the local government.
- C. The provisions of the emergency contingency plan shall be carried out immediately whenever there is a fire, explosion, or release of contaminants which could pose an immediate or imminent threat to public health, welfare or the environment.
- D. The emergency contingency plan shall be amended immediately whenever:
 - (1) the facility permit is renewed or modified;
 - (2) the plan fails in an emergency;
 - (3) the facility's design, operations, maintenance, or other circumstances change in a way that increases the potential for fires, explosions, or releases of hazardous constituents, or necessitate changes to the planned emergency response;
 - (4) the list of emergency coordinators changes; or
 - (5) the list of emergency equipment changes.
- E. The emergency contingency plan for emergencies shall, if applicable:
 - (1) describe the actions facility personnel should take in response to fires or other disaster;
 - (2) describe arrangements with local police departments, fire departments, hospitals, contractors, and state and local emergency response teams to coordinate emergency services;
 - (3) list the name(s) and telephone numbers of the emergency coordinator(s). If more than one person is listed, one must be named as the primary emergency coordinator;
 - (4) include a list of all emergency equipment at the facility (such as fire extinguishing systems, communications and alarm systems), along with the location, physical description, and a summary of the capabilities of each item;
 - (5) include an evacuation plan for facility personnel which describes signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes in cases where the primary routes could be blocked by fire or releases of toxins;
 - (6) indicate when the emergency contingency plan must be amended;
 - (7) instruct the emergency coordinator or his designee, in case of an imminent or actual emergency situation, to immediately:
 - (a) activate internal facility alarms or communication systems, where applicable, to notify all facility personnel; and
 - (b) notify appropriate state and local agencies with designated response roles if their assistance is needed;
 - (8) instruct the emergency coordinator, whenever there is a fire or other disaster, to as quickly as possible identify the nature, source, amount, and extent of any accident of fire by means of observation, review of facility records or manifests, or if necessary, by chemical analysis;
 - (9) instruct the emergency coordinator to assess possible hazards to public health, welfare or the environment that may result from the fire or explosion; and
 - (10) instruct the emergency coordinator to provide for appropriate treatment, storage, or disposal of recovered waste, or any other material that results from a release, fire, or explosion at a facility, after the emergency situation is under control.

20.9.2.410 COMPLIANCE WITH LOCAL REGULATIONS AND ORDINANCES: Any person holding a tire recycling facility permit, a civil engineering application permit or a scrap tire hauler registration shall comply with all local, state, and federal regulations and ordinances.

20.9.2.411 RECORD KEEPING:

A. Any person holding a tire recycling facility permit shall maintain a daily operating record at the facility during the active life of the facility or during construction of the civil engineering application that includes all manifests showing the collection activities of the business.

B. All persons holding a tire recycling facility permit shall maintain manifests and any records necessary to comply with its annual report requirements which shall include:

- (1) the type of processing;
- (2) the number of PTEs or weight of the scrap tires received in each month from each scrap tire generator or scrap tire hauler;
- (3) the name, mailing address, and E-mail address if available, of each scrap tire generator or scrap tire hauler,
- (4) the name, mailing address, and E-mail address if available, where the scrap tires originated;
- (5) the number of unprocessed scrap tire remaining at the site at the end of the calendar year;
- (6) the number of processed scrap tire remaining at the site at the end of the calendar year;
- (7) the number of tire bales, if applicable, remaining at the site at the end of the calendar year.

C. Any person holding a civil engineering application permit shall maintain manifests and any records necessary to comply with its annual report requirements which shall include:

- (1) the number of PTEs or weight of the scrap tires received in each month from each scrap tire generator or scrap tire hauler,
- (2) the name, mailing address, and E-mail address if available, of each scrap tire generator or scrap tire hauler,
- (3) the name, mailing address, and E-mail address if available, where the scrap tires originated;
- (4) the status of the civil engineering application to include the number of PTEs or weight of scrap tires that have not been used for the project yet, the number that is still needed, and the portion of the project that has already been completed..

D. Any person holding a scrap tire hauler registration shall maintain manifests and any records necessary to comply with its annual report requirements which shall include:

- (a) the number of PTEs or weight of the scrap tires for each month, by origin and destination;
- (b) the name, mailing address, and E-mail address if available, of each scrap tire generator or scrap tire hauler;
- (c) the name, mailing address, and E-mail address if available, of each authorized facility where scrap tires are delivered.

E. Any person holding a scrap tire hauler registration shall retain all manifests showing the collection and disposition of all used or scrap tires and tire derived products.

F. All records, plans, manifests and information required by this part shall be furnished upon request and be made available at reasonable times for inspection by the department.

G. All records, plans, manifests and annual reports required by this Part shall be retained by the facility during the operational life of the facility and for a period of three (3) years after closure of the facility.

H. Any person holding a tire recycling facility permit, a civil engineering application permit or a scrap tire hauler registration shall retain at the permitted site or vehicle a copy of the terms and conditions of the permit or registration, the emergency contingency plan and permit or registration certificate.

20.9.2.412 ANNUAL REPORTS AND FINAL REPORTS:

A. Any person having a tire recycling facility permit, civil engineering application permit or scrap tire hauler registration shall submit an annual report to the secretary within 60 days after the end of each calendar year describing the operations of the past year. The report shall include:

- (1) For tire recycling facilities:
 - (a) the type of processing;
 - (b) the number of PTEs or weight of the scrap tires received in each month from each scrap tire generator or scrap tire hauler;
 - (c) the name, mailing address, and E-mail address if available, of each scrap tire generator or scrap tire hauler,

- (d) the name, mailing address, and E-mail address if available, where the scrap tires originated;
 - (e) the number of unprocessed scrap tire remaining at the site at the end of the calendar year;
 - (f) the number of processed scrap tire remaining at the site at the end of the calendar year;
 - (g) the number of tire bales, if applicable, remaining at the site at the end of the calendar year.
- (2) For scrap tire haulers:
- (a) the number of PTEs or weight of the scrap tires for each month, by origin and destination;
 - (b) the name, mailing address, and E-mail address if available, of each scrap tire generator or scrap tire hauler;
 - (c) the name, mailing address, and E-mail address if available, of each authorized facility where scrap tires are delivered.
- (3) For civil engineering applications during the construction period:
- (a) the number of PTEs or weight of the scrap tires received in each month from each scrap tire generator or scrap tire hauler,
 - (b) the name, mailing address, and E-mail address if available, of each scrap tire generator or scrap tire hauler,
 - (c) the name, mailing address, and E-mail address if available, where the scrap tires originated;
 - (d) the status of the civil engineering application to include the number of PTEs or weight of scrap tires that have not been used for the project yet, the number that is still needed, and the portion of the project that has already been completed.
- B.** Civil engineering application final report: Any person having a civil engineering application permit shall submit a final report to the secretary within 30 days after completion of the project. The report shall include:
- (1) the final civil engineering application design, including cross section and plan view, if different from the proposed design;
 - (2) the total number of PTEs or tire bales used for the civil engineering application;
 - (3) the length, width and height of the civil engineering application; and
 - (4) photographs of the civil engineering application;

20.9.2.500 SCRAP TIRE MANIFEST SYSTEM:

- A.** Each shipment of ten or more scrap tires transported by a scrap tire generator or hauler shall be accompanied by a scrap tire manifest approved by the secretary. The manifest shall be provided by the transporter of the scrap tires and shall include:
- (1) the name, site address, mailing address and telephone number of the generator;
 - (2) the name, address, and telephone number of all haulers in the order each will be transporting the scrap tires. If the scrap tires are being transported for hire, the scrap tire or commercial hauler's registration number shall be included;
 - (3) if the hauler removes scrap tires from the shipment for reuse, the number of tires removed, the name, location and permit number of location removed, if applicable;
 - (4) the name, telephone number and permit or registration number of the facility to which the scrap tires are to be delivered;
 - (5) the number of scrap tires released by the scrap tire generator; and
 - (6) the number of scrap tires delivered to the final destination.
- B.** The generator or his authorized agent shall sign and date the manifest and obtain the signature of the initial hauler and date of acceptance on the manifest. The generator shall retain a copy of the manifest. Each hauler shall obtain the signature and date of the individual who accepts the scrap tires for recycling, further transportation or disposal, retain a copy of the manifest, and provide the original manifest to the next hauler or facility operator who receives the scrap tires.
- C.** If a registered scrap tire or registered commercial hauler removes for reuse all tires from an individually manifested shipment, the hauler shall return the original manifest to the generator within 60 days of the date of collection. If all are not removed, the manifest shall be adjusted to show the number of tires removed. The manifest shall follow the scrap tires to the next hauler or final destination.
- D.** The manifest shall accurately reflect the required information and shall be signed and dated by the generator, each hauler of the scrap tires, and by the final destination, acknowledging delivery, number or weight, and receipt of the scrap tires. All signatories shall be duly authorized agents of their organizations. The generator shall keep a copy of the originating manifest for three years.

E. The final destination of the scrap tires shall be a permitted tire recycling facility, a permitted civil engineering application site, a hauler's temporary storage facility, a bona fide agricultural use, or a solid waste facility having a valid permit or registration issued pursuant to the Solid Waste Act 74-9-1 through 74-9-42 NMSA 1978.

F. Upon discovery of any significant discrepancy including, but not limited to, factual misrepresentation on the manifest, irregularities in transportation or any unauthorized action in regard to the shipment, delivery, or disposal of the scrap tires, the person discovering the discrepancy shall notify the department, the generator, the hauler, and the final destination in writing within 24 hours.

G. Within thirty days of receipt of a scrap tire shipment at the final destination, the owner or operator of the final destination shall send the original signed copy of the manifest to the scrap tire generator, acknowledging receipt of the shipment. The facility owner or operator shall list any (significant) discrepancies on the manifest. Other methods of return of the manifest may be allowed upon specific approval from the secretary.

H. A copy of the manifest shall be retained by each hauler and final destination for their operating records. The scrap tire generator shall retain for a period of three years both the originating copy and the returned original manifest signed by the solid waste facility owner or operator and all haulers transporting the waste. Haulers shall retain a copy of the manifest for a period of three years.

I. Copies of the manifest shall be retained by the final destination throughout any closure period.

J. This section shall not apply to scrap tires that are collected incidentally to the collection and transportation of municipal solid waste to a permitted or registered facility.

K. Public entities that transport scrap tires to publicly owned solid waste facilities or tire recycling facilities shall be exempt from this section.

L. Registered commercial waste haulers that are hired to transport scrap tires from an illegal dump site or an abatement project are exempt from this section.

20.9.2.600 CLOSURE REQUIREMENTS FOR TIRE RECYCLING FACILITIES AND CIVIL ENGINEERING APPLICATIONS: In compliance with 20.9.2.200, closure plans are required in the application for a permit or permit modification.

20.9.2.601 CLOSURE REQUIREMENTS FOR TIRE RECYCLING FACILITIES:

A. The owner or operator of the tire recycling facility shall prepare a written closure plan that describes the steps necessary for closure of the tire recycling facility and any anticipated future uses of the property following closure.

B. The owner or operator of the tire recycling facility shall notify the department in writing of the intent to close at least 30 days before the last day tires are to be accepted at the facility and shall notify the department in writing within 14 days after the closure is complete.

C. Within 30 days after site closure is complete, the owner / operator shall notify the Department certifying that all requirements have been met.

D. If the facility was required to provide proof of financial assurance for closure, the Department shall inspect the site within 30 days of closure. If the closure is found to be satisfactory, the Department shall approve the closure in writing and release the financial assurance instruments.

F. Owners or operators of tire recycling facilities shall:

- (1) remove all processed and unprocessed tires;
- (2) dismantle and remove any improvements related to scrap tire handling and processing, if required in the approved closure plan;
- (3) comply with all other conditions of the approved closure plan of the permit.

20.9.2.602 CLOSURE AND COMPLETION REQUIREMENTS FOR CIVIL ENGINEERING APPLICATIONS: Upon completion of a civil engineering application, the owner or operator shall:

A. remove all scrap tires not used for the civil engineering application;

B. submit a closure report to the department within 60 days after closure completion. The report shall include a summary of closure activities and evidence, include photographs, that all requirements for closure have been met.

C. provide the department with a final report of the completed civil engineering application including as built drawings in accordance with Subsection B of 20.9.2.412.NMAC 1978. If the civil engineering application used 100,000 PTEs or more or is more than two scrap tire bales high, the as built shall be signed and sealed by a professional engineer registered in New Mexico.

- D. the owner or operator may request permission from the department to file a revised description.

20.9.2.603 ADDITIONAL CLOSURE AND COMPLETION REQUIREMENTS FOR CIVIL ENGINEERING APPLICATIONS THAT USE SCRAP TIRES FOR LAND RECLAMATION:

A. For completion of a civil engineering application that uses scrap tires for land reclamation, the owner or operator shall cover the site with 30 inches of compacted native soils and 6 inches of top soil to provide a 36-inch final cover that meets original grade and implement measures where necessary to control erosion and rodent intrusion.

B. Upon completion of closure, a detailed description of the location of the land reclamation site, including a plat signed by a registered surveyor, shall be filed with the appropriate county land recording agent. The description and the plat shall be filed so that it will be found during a title search and proof of the filing shall be submitted to the department. The description shall perpetually notify any potential purchaser of the property that:

- (a) scrap tires have been used to reclaim the land; and
- (b) if applicable, its use is restricted as described in the post-closure care plan.

C. The owner or operator shall prepare a written closure and post-closure care plan that describes the steps necessary for closure and post-closure care of the project and any anticipated future uses of the property following closure. The written plan shall include

- (1) a vegetation plan, if appropriate and
- (2) a monitoring and repair plan that describes methods to be used to ensure cover integrity, including but not limited to settlement, ponding, water erosion, wind erosion, and inadequate drainage.

20.9.2.700 ENFORCEMENT of these Rules shall be done in compliance with the Recycling and Illegal Dumping Act, Sections 74-13-11 through 74-13-16.

20.9.2.800 RECYCLING AND ILLEGAL DUMPING FUND

20.9.2.801 CRITERIA AND PROCEDURES FOR AWARDING GRANTS AND LOANS:

A. Counties, municipalities, cooperative associations, Indian nations, pueblos, tribes, or land grant communities may apply to the department for a grant, or loan for the purposes stated in the Recycling and Illegal Dumping Act, Section 74-13-17.

B. An application for a grant or loan shall be submitted to the Department and shall include the following information:

- (1) name and address of the applicant;
- (2) name, phone number and E-mail address, if available, of contact person;
- (3) types of funding requested and amounts;
- (4) detailed description of proposed use of funds;
- (5) a description of the need and urgency for the requested funds;
- (6) a description of the area and population that would be served;
- (7) a budget; and
- (8) if applicable, potential markets for products produced.

C. A committee appointed by the Secretary shall:

- (1) review all applications for eligibility, completeness, and adequacy of technical and financial information;
- (2) establish funding and application cycles;
- (3) establish priorities each funding and application cycle for awarding loans and grants;
- (4) develop a point system based on need, urgency, alignment with established priorities, and value to the environment and the affected community;
- (5) use point system to evaluate each application; and
- (6) make recommendations to the Secretary for awarding grants and loans based on fund availability and points.

D. In accordance with Subsection C of Section 74-13-7 NMSA 1978, the recycling and illegal dumping alliance shall review and make recommendations for funding grant applications from the recycling and illegal dumping fund.

E. Upon acceptance of a grant or loan from the Recycling and Illegal Dumping Fund, the applicant and the Secretary will enter into a contractual agreement that:

- (1) clearly states the proposed use of funds;

- (2) establishes a work plan and schedule;
- (3) creates a budget; and
- (4) for abatement projects, states the mechanisms to be used by local authorities to prevent future illegal dumping at the site to be abated.

20.9.2.802 REQUIREMENTS AND PROCEDURES FOR CONTRACTING WITH PUBLIC ENTITIES FOR THE ABATEMENT OF ILLEGAL DUMPSITES AND RECYCLING:

A. The governing body of a county, municipality, cooperative association, Indian nation, pueblo or tribe, or land grant community may contract with the secretary for the abatement of illegal dumpsites and stockpiles located within the boundaries of the county, municipality or cooperative association, Indian nation, pueblo, tribe, or land grant community. Applications for an abatement contract shall be submitted to the department, which shall provide for the reimbursement of the county, municipality, cooperative association Indian nation, pueblo, tribe, or land grant community for expenses incurred in bringing an abatement action, including court costs, reasonable attorneys' fees and the actual expense of eliminating a dumpsite if that expense is not recovered from and paid by the owner or operator of the dump as a result of the action.

B. All abatement contracts will be prioritized for award utilizing the following criteria:

- (1) number of PTEs;
- (2) population within a five-mile radius of the illegal dumpsite or stockpile;
- (3) schools, hospitals, businesses and industries within a five-mile radius of the illegal dumpsite or stockpile;
- (4) the distance to rivers, streams and arroyos;
- (5) the fire hazard posed; and
- (6) whether the illegal dumpsite or stockpile is still active, and if so, what action, if any, is being taken by the governing body of the county, municipality, cooperative association, Indian nation, pueblo or tribe, or land grant community to terminate the activity.

20.9.2.900 FINANCIAL ASSURANCE

20.9.1.901 APPLICABILITY AND EFFECTIVE DATE:

A. The requirements of 20.9.2.900-999 NMAC apply to owners and operators of all tire recycling facilities and civil engineering applications that use scrap tires for land reclamation required to provide financial assurance pursuant to Subsection D of 20.9.2.202 NMAC and Subsection D of 20.9.2.207 NMAC, except owners and operators who are the United States, the state of New Mexico, or any agency, department, instrumentality, office, or institution of those governments whose debts and liabilities are the debts and liabilities of the United States or the state of New Mexico.

B. The owner or operator of a tire recycling facility modified after the effective date of these regulations shall have an approved financial assurance mechanism in place prior to processing the additional tires.

C. For tire recycling facilities operating on or after September 1, 1995, the requirements of 20.9.2.900-999 NMAC apply.

20.9.1.902 FINANCIAL ASSURANCE FOR CLOSURES.

A. The owner or operator of a tire recycling facility or civil engineering application that uses scrap tires for land reclamation that is required to provide financial assurance pursuant to Subsection D of 20.9.2.202 NMAC and Subsection D of 20.9.2.207 NMAC shall develop a detailed written estimate, in current dollars, of the cost of hiring a third party to close the facility. The owner or operator shall file a copy of the estimate with the department concurrently with any request for approval of a financial assurance mechanism, and shall place a copy of the estimate in the operating record, and notify the department that the estimate has been placed in the operating record.

B. During the active life of the facility, the owner or operator shall annually adjust the cost estimate for inflation and any other factors affecting closure costs. A copy of the adjusted closure cost estimate shall be filed with the department, and a copy shall be placed in the operating record.

C. The owner or operator shall increase the amount of financial assurance if changes to the closure or facility conditions increase the maximum cost of closure or abatement at any time during the remaining active life by over 3 percent of the current financial assurance amount.

D. The owner or operator may reduce the amount of financial assurance for closure if the cost estimate exceeds the maximum cost of closure at any time during the remaining life of the facility, upon specific approval by the secretary. To seek approval, the owner or operator shall provide the adjusted cost estimate and supporting documentation to the department. If approved, the owner or operator may revise any financial assurance documents to reflect the adjusted closure cost estimate, and shall file a duplicate original of each financial assurance document with the department within 15 days following approval, and shall place a copy of the estimate and approval in the operating record.

E. Cost estimates for all facilities shall include department contract management costs of at least 10 percent of the estimated closure costs.

F. The owner or operator shall provide continuous coverage for closure until released from financial assurance requirements by a written verification issued by the secretary pursuant to Subsection D of 20.9.2.601 NMAC.

20.9.2.903 ALLOWABLE MECHANISMS: The owner or operator of a tire recycling facility or civil engineering applications that use scrap tires for land reclamation that are required to post financial assurance shall select a financial assurance mechanism from those allowable mechanisms for closure identified in 20.9.1.906 NMAC.

20.9.2.904 - 20.9.2.999 [RESERVED.]

20.9.2.1000 MISCELLANEOUS

20.9.2.1001 VARIANCES: Any person seeking a variance from any requirement of this part shall do so in accordance with Permit Procedures Environment Department, 20.1.4 NMAC.

20.9.2.1002 RECYCLING AND ILLEGAL DUMPING ALLIANCE: The recycling and illegal dumping alliance shall complete the requirements of Subsection C of 74-13-7 NMSA 1978.

20.9.2.1003 EXEMPTIONS: Any person claiming by be exempt from the Act because the scrap tires will be used in an agricultural use shall demonstrate that the scrap tires will be used on land that has qualified as Land Used Primarily For Agricultural Purposes, pursuant to 3.6.5.27 NMAC. Upon request, verification that the property upon which the tire recycling facility or civil engineering application is located has been granted an agricultural exemption by the assessor of the county where the tire recycling facility or civil engineering application is located shall be submitted to the secretary.

20.9.2.1004 REUSABLE TIRES: Reusable tires shall be kept for resale for a period not to exceed one year. After that time, they are considered scrap tires subject to the Recycling and Illegal Dumping Act, Sections 74-13-1 through 74-13-20 NMSA 1978 and the Solid Waste Act, Sections 74-9-1 through 74-9-43 NMSA 1978..

20.9.2.1005 COMPLIANCE WITH OTHER REGULATIONS: Compliance with this part does not relieve a person of the obligation to comply with other applicable local, state and federal laws.

20.9.2.1006 SUPERSESSON OF PRIOR REGULATIONS: This part supersedes Tire Recycling Regulations, 20 NMAC 9.2, filed September 1, 1995.